

**MINUTES OF THE
UTAH CONSTITUTIONAL REVISION COMMISSION**
Thursday, November 15, 2007 – 1:00 p.m. – Room W125 House Building

Members Present:

Mr. Kevin J. Worthen, Chair
Sen. Mike Dmitrich
Sen. Peter Knudson
Ms. Kristine Strachan
Mr. Roger Tew

Members Absent:

Judge Jon M. Memmott, Vice-Chair
President John L. Valentine
Rep. Sheryl L. Allen
Rep. Ralph Becker
Rep. Ronda Rudd Menlove
Mr. Byron L. Harward
Mr. Michael Peterson
Mr. Robin L. Riggs

Staff Present:

Mr. Jerry D. Howe, Policy Analyst
Mr. Robert H. Rees, Associate General Counsel
Ms. Amanda Majers, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Chair Worthen called the meeting to order at 1:11 p.m. and excused Judge Memmott and Rep. Allen from the meeting. No quorum was present at this meeting.

2. Death Penalty and Post Conviction Amendments

Mr. Mark Shurtleff, Attorney General, spoke in favor of "Proposed Amendment of Article I, Section 14" and "Effective Death Penalty and Post Conviction Reform Amendments."

Fourth Amendment and Article I, Section 14, "Unreasonable Searches Forbidden - Issuance of Warrant"

Mr. Paul Cassell, former judge and current University of Utah law professor, spoke in favor of abolishing the Utah exclusionary rule because the search and seizure provision has not been interpreted by the Utah Supreme Court in a balanced way. He related that the Utah Supreme Court has said it will interpret the search and seizure provision independently of the federal constitution. Mr. Cassell contended that in most cases where independent interpretation is applied the Utah Supreme Court provides greater protections for criminal defendants. Mr. Cassell asserted that Utah's independent exclusionary rule is not supported by Utah's history and traditions. He further contended that Utah's independent search and seizure rule is harmful to crime victims because it creates two bodies of law, one under the state level and one under the federal level. Mr. Cassell informed the Commission of his support for the attorney general's proposal to abolish the state's exclusionary rule, but also recommended a compromise that would add a provision to Article I, Section 14 guaranteeing that no reliable evidence could be suppressed, while still allowing the search and seizure provision to be interpreted independently by the Utah Supreme Court.

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Mr. Tew expressed concern that every time the Utah Supreme Court makes a decision that deviates from the federal constitution there are those who will make an argument that the state constitution should be amended into compliance with the federal constitution. He emphasized that if the Legislature were to amend Article I, Section 14 there needs to be caution to ensure that the state constitution itself is not abolished.

Mr. Alan Sullivan, Snell and Wilmer, stated concern that the proposed changes to Article I, Section 14 would make its substance equal in scope to that of the Fourth Amendment making Article I, Section 14, superfluous. He explained that the proposed changes would preclude the Utah Supreme Court from interpreting Article I, Section 14 as an independent source of protection, and would relinquish to the United States Supreme Court Utah's constitutional guarantee against unreasonable searches and seizures. He further noted that the proposed change to Article 8, Section 5 would change the governance of determining the grounds of habeas corpus relief from the courts to the Legislature.

Mr. Michael Zimmerman, Snell and Wilmer, also spoke against the proposed amendment to Article I, Section 14 when he encouraged the Commission to engage in a more thorough discussion and investigation of the issue. He commented that the Utah Supreme Court often more closely represents Utah citizens' opinions in its decisions; therefore, Utah should maintain its independent search and seizure protection.

Mr. Tew asked the presenters whether there is an urgency for law enforcement to necessitate the Legislature adopting the attorney general's proposed amendment expeditiously.

Mr. Zimmerman stated that the inconsistency created by the differing federal and state search and seizure amendments might be inconvenient for law enforcement, but the Commission would have to hear from law enforcement officers to determine how they are affected.

Mr. Shurtleff argued that there is an urgency for law enforcement for the Legislature to resolve this issue; because there are two bodies of law currently governing search and seizure, and law enforcement officers need to be clear on which law to follow.

The Commission continued to discuss the merits of the proposed amendment to Article I, Section 14, and whether Utah should maintain its independent search and seizure protection.

Article I, Section 5, "Habeas Corpus" and Article VIII, Section 5, "Jurisdiction of District Court and Other Courts - Right of Appeal"

Mr. Thomas Brunker discussed "Effective Death Penalty and Post Conviction Reform Amendments (10/25/07 Draft)," which was distributed to the Commission prior to the meeting. He stated that the attorney general's proposed amendment would give all Utah courts the jurisdiction to collaterally review criminal convictions, but would also give the Legislature the authority to define the scope and extent of review.

The Commission asked Mr. Brunker questions concerning the "Effective Death Penalty and Post Conviction Reform Amendments (10/25/07 Draft)."

Mr. Zimmerman addressed the issue of whether the proposed post-conviction amendment adequately addresses the current problem of providing adequate funding for post-conviction counsel.

Mr. Troy Booher, Snell and Wilmer, commented that more study is needed to determine what the legal landscape would look like if there were adequate funding for post-conviction counsel. He stated that the causes of the post-conviction problem are very complex, and stated that after further study it may come to light that there may not be a need for the proposed amendment.

Mr. Voros and Mr. Brunker addressed the Commission's questions concerning the proposed amendment's limitation of the Supreme Court's jurisdiction to collaterally review criminal convictions and sentences.

Sen. Dmitrich inquired how Utah compares to other states in terms of how long an inmate is on death row. Mr. Brunker responded that California has more inmates on death row and has a longer average stay; however, there are other states that have shorter death row stays. Sen. Dimitrich also asked if the constitution and statute changes will speed up the process in the future. Mr. Brunker said it would.

Mr. Worthen distributed and discussed a letter addressed to himself from Justices of the Utah Supreme Court.

Justice Michael J. Wilkins, Utah Supreme Court, stated that one has to conclude from the arguments presented that there is either an anticipatory or an actual lack of confidence in the Utah Supreme Court. Justice Wilkins described the role of the Supreme Court in relation to the other two branches of government and to the people.

Ms. Strachan urged the attorney general to consider an amendment with only Mr. Cassell's language.

Sen. Knudson stated that he felt that the Legislative members of the Commission agree with Mr. Worthen, in that, there is a lot to consider and deliberate.

Mr. Shurtleff requested from the Commission either a positive or a negative recommendation as to whether the constitutional amendments should proceed to the Legislature.

Mr. Worthen replied that the Commission is not ready to make a recommendation either way, and stated that further study is needed.

3. Other Business / Adjourn

Mr. Worthen announced that Ms. Lisa Watts Baskin has been recommend to the Commission as a new member, and the Commission will vote on the issue at the next meeting.

Chair Worthen adjourned the meeting at 3:57 p.m.